



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

**IILHR COMPARATIVE REVIEW
OF
MINORITY REPRESENTATION IN ELECTORAL
LEGISLATION**

Prepared by the Institute for International Law and Human Rights

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EXECUTIVE SUMMARY

Minority representation in the political process is fundamental to a democratic state. International law recognizes the right to vote without regard to race, color, sex, language, religion, or other status as fundamental and universal. **For states with highly diverse populations, such as Iraq, the electoral system plays a crucial role in ensuring effective participation and representation.**

It is common for democratic governments to employ some form of proportional representation (PR) in their electoral systems in order to ensure the representation of minority groups within the political process. Proportional representation systems vary in type and effectiveness from state to state depending on the degree of diversity within the population and the degree of independence and oversight of the electoral commission. In addition to proportional representation systems, many democracies, especially post-conflict states or those wherein minorities have been historically underrepresented, utilize quota systems. Quota systems may be legislated or voluntary and require that a certain number of seats or candidate positions be reserved for members of an identified minority group. Quota systems are also employed in many countries to ensure the fair representation of women within the political system.

Article 20 of the Iraq Constitution guarantees Iraqi citizens, men and women, the right to vote, elect, and run for office. Article 14 of the Constitution declares that all Iraqis are equal before the law. To ensure that legislators and legislation represent the diverse interest of the Iraqi population, the government of Iraq may consider employing a proportional representation system or a blend of several proportional representation systems. Additionally, to ensure the continued representation of women in public office, the government of Iraq may consider to continue utilizing and maintaining a quota system.

Electoral systems and their ability to incorporate minorities in the political process vary greatly from country to country. The design and application of a given system in a given state requires careful examination of system options and a comprehensive understanding of the characteristics of all minority groups.

This paper provides a brief overview of electoral systems, their effects, country references for each system and a comparative analysis of their relative efficacy. This paper also addresses the political participation of women and other minorities in several newly-formed and Arab states and provides sample legislative language.

For further information or detail on any of the topics addressed herein, please contact IILHR.

MINORITY PROVISIONS IN ELECTORAL LEGISLATION

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I. INTRODUCTION

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) recognizes:

The right and opportunity, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status:

- *To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- *To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot; and*
- *To have access on general terms of equality to public service in one's country.¹*

The ICCPR and other international treaties and covenants² obligate states to guarantee the rights of persons belonging to national or ethnic minorities to participate in public life. Best option is guaranteeing this right by the constitution, but is most effective where it is also supported by other forms of legislation.³

Guaranteeing individual or organizations rights to participate in elections are essential for the establishment and development of a democracy. These rights include the right to form political or other associations, to campaign, to stand for office and vote. The guaranteed rights extend beyond those of the individual voter to the rights of political parties and other associations to garner support and campaign.⁴

Specifically, these rights include:

- The right to vote and, in particular, the right to a secret ballot;
- The right to regular and fair elections;

¹ International Covenant on Civil and Political Rights (ICCPR), Article 25, at http://www.unhchr.ch/html/menus/b/a_ccpr.htm (last visited June 1, 2009).

² See generally The Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Art. 2); UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Art. 2); Council of Europe's Framework Convention for the Protection of National Minorities (Art. 15).

³See generally The incorporation of the 1789 Declaration of the Rights of Man into the French Constitution by the Preamble to that Constitution; the Basic Rights in Articles 1 to 19 of the German Constitution; Amendments I to X, XIII to XV, XIX, XXIV and XXVI of the American Constitution; the Canadian Charter of Rights and Freedoms, which forms Part I of the Canadian Constitution Act; the National Goals and Directive Principles and Basic Social Obligations in the Papua New Guinean Constitution; and the Fundamental Rights in Part III of the Indian Constitution; Luxembourgers and Their Rights, in Chapter II of the Luxembourg Constitution; the Principi Fundamentali in Articles 1 to 11 of the Italian Constitution; the Fundamental Rights in Chapter 1 of the Dutch Constitution; Articles 40-44 of the Irish Constitution; Chapter 2 of the Swedish Instrument of Government; Part I of the Spanish Constitution; Article 8 and Chapter XII of the Hungarian Constitution; etc.

⁴Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights. "Guidelines to Assist National Minority Participation in the Electoral Process" 16, (2003), hereafter "OSCE Guidelines," available at http://www.osce.org/publications/odihr/2001/01/12347_129_en.pdf.

- The right to stand for public office;
- Freedom of association;
- Freedom of assembly;
- Freedom of expression.⁵

Any restrictions of these rights in a state's constitution or legislation must be carefully scrutinized to ensure they do not violate international standards. Restrictions may include:

- Stipulating a language requirement for public office;
- Undue requirements for the registration of political parties;
- Seat distribution requirements which may force parties or candidates to stand in a certain number of provinces or districts, or even force them to have an office in each province if that may lead to discrimination against national minorities.⁶

Designers of electoral legislation in transitional and post-conflict states should consider:

- having a clear understanding of the situation of all communities, in particular ethnic, national, religious and linguistic minorities, including how many are they, numerical structure, geographical spread of minorities; levels of literacy that exist within the state and other defining aspects;
- designing systems according to particular needs of society, including minorities';
- avoid forcing electors and the elected into pre-determined identities;
- adopt special measures, where needed, to ensure fair representation of minority women⁷

Article 20 of the Iraqi Constitution guarantees Iraqi citizens, both male and female, the right to vote, elect and run for office.⁸

a. The right to vote

States should carefully select the language used in legislation regarding national or ethnic minorities' right to vote in elections in order to prevent possible discrimination against non-citizens and nomadic peoples. In case of constitutions defining citizenship as limited to an ethnic group, - thus making it administratively challenging to become a citizen - the voting rights of minorities may be restricted. Further, where the right to vote is restricted to

⁵ *Id.*

⁶ *Id* at 17.

⁷ Andrew Reynolds, "Electoral Systems and the Protection and Participation of Minorities," *Minority Rights Group International*, 2, (2006), available at <http://aceproject.org/ero-en/topics/electoral-systems/Electoral%20Systems%20and%20the%20Protection%20and%20Participation%20of%20Minorities.pdf/view?searchterm=Electoral%20systems%20and%20the%20protection%20and%20participation%20of%20minorities>.

⁸ Iraqi Constitution, Article 20, at http://74.125.95.132/search?q=cache:TTSIFwGDEp8J:www.uniraq.org/documents/iraqi_constitution.pdf+iraq+constitution&cd=3&hl=en&ct=clnk&gl=us (last visited May 26, 2009).

residency in a constituency, nomadic people's may hindered in their ability to exercise their right.⁹

b. The right to regular and fair elections

Elections must be regular and held at reasonable intervals. Most of constitutions' guarantee elections every 2 to 5 years. The right to a secret ballot is fundamental to fair elections and is particularly important in states with heterogeneous societies. Elections must not only be conducted fairly but must also be perceived as fair, particularly in societies with ethnic tensions or high levels of distrust among ethnic groups.

c. The right to stand for office

Restrictions on the right to stand for office should be carefully examined to ensure that individuals belonging to national or ethnic minorities are not hindered in exercising this right. Language regulations may be established for the proceedings of public institutions but should not be a qualification requirement.

II. MEANS OF ACHIEVING MINORITY REPRESENTATION

a. Electoral Systems

Proportional Representation (PR) systems are most commonly utilized in democracies to ensure at least some form of representation of minority groups in the political process. Their effectiveness depends on how diverse is, and, whether or not ethnic, religious and cultural distinctions have led to tensions and/or divisions within the society. An in-depth analyses of Proportional Representation versus majority-plurality ("winner-takes-all") systems you may find in the following chapter.

b. Quotas¹⁰

A quota is an allocation rule wherein political seats are distributed in accordance with a certain formula. A quota system for minority representation is generally utilized in states where an unregulated distribution of seats would cause unintentional imbalances and inequalities, as a form of positive discrimination or affirmative action.

In the case of national or ethnic minorities, imbalances and inequalities could be a highly destabilizing factor in society if a minority group is contesting the legitimacy of the political system. In this case the use of a quota seeks to achieve equal or balanced access to political power.

⁹ OSCE Guidelines, 17.

¹⁰ ACE Electoral Knowledge Network, Legislated Quotas for National Minorities at <http://aceproject.org/ace-en/topics/pc/pca/pcao3/pcao3b/default/?searchterm=minority%20provisions> (last visited June 1, 2009).

Regional quotas are among the most commonly used. It distributes parliamentary seats to representatives of all regions of a country, not just according to their share of the population, but giving non-proportional seats to certain regions over others. Over-representation for certain regions is advantaging minority groups that are concentrated in those parts of the country.

The *reserved seats system* is also a widely used quota system and ensures the representation of minority groups in the legislature by guaranteeing a certain share of parliamentary seats for candidates representing minority group or groups. (Note that the legal identification and recognition of minorities groups is an essential aspect of this system). Representatives for these reserved seats are often elected in the same manner as other representatives, but in some states, only members of these minority groups are entitled to vote for their candidates.

In addition to assisting in creating a more balanced political system wherein minority groups are represented, quotas also increase the participation and representation of women in the political process. Three main arguments lie behind the call for quotas to enhance women's representation:

- Women represent (more than) half the population and hence have the right to half of the seats (the justice argument);
- Women have different experiences (biological or socially constructed) that ought to be represented (the experience argument);
- Women and men have partly conflicting interests, and thus men cannot represent women (the interest group argument).¹¹

Quotas can be of three types: *constitutional quota* (mandated by the Constitution), *electoral law quotas* (determined by electoral law), and *voluntary party quotas* adopted and implemented by individual political parties. The first and the second quota type are legislated quotas, whereas the third type is a non-legislated quota.¹²

We can identify the following Quota requirements

- Quotas for the pool of potential candidates: are designed to open up the possibilities for party selection committees or voters in primary elections to select candidates from a more diverse pool of potential candidates than is normally presented to them. "Women only shortlists" is one way of broadening the pool of potential candidates;
- Quotas for candidates/candidate lists: is the most common legislated quota. Here, a fixed number or percentage of the places on the candidate lists or total number of candidates is reserved for persons belonging to the group targeted by the quota. To be effective this type of quota is often combined with placement criteria whereby the disadvantaged groups are promised not only nomination, but nomination to

¹¹ ACE Electoral Knowledge Network, Legislated Quotas for Women's Representation at <http://aceproject.org/ace-en/topics/pc/pca/pcao3/pcao3a> (last visited June 1, 2009).

¹² ACE Electoral Knowledge Network, Legislated Quotas at <http://aceproject.org/ace-en/topics/pc/pca/pcao3/default/?searchterm=legislated%20quotas> (last visited June 1, 2009).

“winnable” seats called sometimes “double quota”. Quotas for candidate lists are mostly in place in proportional representation systems and are often part of the electoral or political party laws. One example is the so called “zipper” system, where every second or third candidate on the list is a woman;

- Quotas for the elected representatives: are targeting the outcome of the elections and is often called “reserved seats” because a certain number or percentage of the seats in the national or sub-national legislature is reserved for persons from the under-represented group. This type of quota is more common in majoritarian electoral systems and is often enshrined in the constitution, underlining the strong effort of the state to enhance minorities’ representation.¹³

Whether a quota system is effective in achieving fair representation depends upon the correct implementation of the system, its enforcement mechanism and sanctions for non-compliance. Whether or not the quota is supported by the major political parties and the general public also has a bearing on its compliance.¹⁴

Implementation of a quota system is often easier in a new political system than in an older one where seats are occupied by incumbents. Enforcing sanctions are vital for compliance with legislated quotas. In order to be effective, sanctions must be (a) relevant - related to elections or the functioning of the political party; (b) effective - being a serious set-back for non-compliers; and (c) reasonable - administrative sanctions rather than criminal ones). It is also important that a specific and independent body (e.g. the Electoral Management Body) be tasked with enforcing the law with enough human and financial resources to do so.¹⁵

Advantages and Disadvantages of Legislated Quotas (LQs)¹⁶

Advantages	Disadvantages
<ul style="list-style-type: none"> ▪ Quotas, legislated or voluntary, are the most effective ways of achieving more balanced representation ▪ More balanced representation can increase minority support for the political system in general and political stability. ▪ Legislated quotas can circumvent conservative party leadership dominated by a social elite which is often seen as the main obstacle to the nomination of minority candidates ▪ Elected representatives serve as role models for younger people and lead to trust in the political process ▪ LQs engage political parties in finding suitable and 	<ul style="list-style-type: none"> ▪ LQs may be considered discriminatory by majority groups and breed resentment ▪ LQs may lead to the perception of a less competent legislature and to distrust among ethnic groups ▪ People elected through LQs may be less respected and lack real power being perceived as not equally competent to their majority counterparts ▪ LQs may be considered taking away the freedom of choice from the voters ▪ LQs, especially those established by the constitution, are difficult to pass as it requires majority support where an imbalance already exists

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ ACE Electoral Knowledge Network, Advantages and Disadvantages of Legislated Quotas for Minority Representation at <http://aceproject.org/ace-en/topics/pc/pca/pca03/pca03b/pca03b1> (last visited June 1, 2009).

<p>diverse candidates</p> <ul style="list-style-type: none"> ▪ LQs are not discriminatory but rather compensate for an already existing discrimination ▪ Rather than limit the freedom of choice, quotas give voters a chance to elect candidates from a more diverse pool. 	<ul style="list-style-type: none"> ▪ LQ can act as an upper ceiling to minority participation rather than a lower floor. It could actually hinder minorities from achieving more balanced representation.
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III. ELECTORAL SYSTEMS¹⁷

Proportional Representation (PR) systems are used in many of the world's democracies: Germany, Sweden, Switzerland, Belgium, Denmark, Holland, Greece, Spain, Austria, Australia, Mexico, Portugal, Japan, Russia, Italy, Ireland, Israel, Poland, Hungary, New Zealand, Iceland, Brazil, Nicaragua, Norway, Finland, and Venezuela among others¹⁸ in order to secure a larger percentage of minority representation within the government than would unlikely occur under a different system. Other democracies, including Canada, the United Kingdom, the United States, and India, utilize "winner-take-all" or plurality-majority, systems.

a. Proportional Representation Systems:

i. List of Proportional Representation (List PR)

According to this system, parties present lists of candidates to the electorate, votes are given to a party and parties receive seats in proportion to their overall share of the national vote. For example: if a party wins 20 per cent of the votes, the party is entitled to 20 per cent of the seats. In this system representatives of minority cultures/groups and women are more likely to be elected. The results of elections in new democracies like South Africa, Indonesia, and Sierra Leone shows that List of Proportional Representation allows parties to put up multiracial and multi-ethnic lists of candidates. The South African National Assembly elected in 1994 was 52 per cent black (of mixed extraction), 32 per cent white, 7 per cent Coloured and 8 per cent Indian. The Namibian Parliament is similarly diverse. List of Proportional Representation has been criticized, however, for damaging voters' connection to their representative when seats are allocated in one single national district, as it happened in Namibia or Israel. In case of closed lists, voters are denied opportunity to choose the persons who will represent their interest, nor can they easily reject an individual representative if they feel that he or she has performed poorly in office.¹⁹ South Africa and the Netherlands are using the Proportional Representation system.

¹⁷ A. Reynolds *supra* at 8-9.

¹⁸ See Center for Voting and Democracy, What is Proportional Representation?, available at <http://www.worldpolicy.org/projects/globalrights/democracy/abcs.html> (last visited on May 22, 2009); See also PR Library, Proportional Representation Voting Systems, available at <http://www.mtholyoke.edu/acad/polit/damy/BeginningReading/PRsystems.htm> (last visited May 22, 2009).

¹⁹ *Id.*

ii. Mixed Member Proportional (MMP)

Combines both constituency (developed at section b) iii below) and List of Proportional Representation systems where the latest compensate for any disproportionality produced by the constituency seat results. For example: if a party wins 10 per cent of the national vote, but no First Past The Post seats (developed at section b) iii below), it is still awarded enough list seats to take their share of the assembly 10 per cent. Countries that use this system include Lesotho, New Zealand, Albania, Germany, Mexico, Italy, Hungary, and Venezuela. This system ensures that elected representatives are linked to geographical districts. However, where voters have two votes — one for the party and one for their local representative — it is not always understood that the vote for the local representative is less important than the party vote in determining the overall allocation of seats in the legislature. Furthermore, two classes of legislators may be formed — one group primarily responsible and beholden to a constituency, and another from the national party list without geographical ties and beholden to the party.

iii. Parallel System

This is a similar system to Mixed Member Proportional combining both district and List of Proportional Representation elections. In this case Proportional Representation seats do not compensate for any disproportionality arising from the district elections. In effect, the two halves of the election system are detached. One advantage is that, when there are enough Proportional Representation seats, small minority parties which have been unsuccessful in the plurality/majority elections can still be rewarded for their votes by winning seats in the proportional allocation. In theory a Parallel system should fragment the party system less than a pure Proportional Representation electoral system. Disadvantages of this system include the likely creation of two classes of representatives and its failure to guarantee overall proportionality. Some parties may still be shut out of representation despite winning substantial numbers of votes. Parallel systems are also relatively complex and can leave voters confused as to the nature and operation of the electoral system. Russia, Pakistan, Tunisia, Azerbaijan, Armenia, Tajikistan, Senegal, and many other countries use the Parallel system.

iv. Single Non-Transferable Vote (SNTV)

This system means plurality voting in multi-member districts. Voters have only one vote but there is more than one representative to be elected in the constituency. Candidates with the highest vote totals take the seats. Single Non-Transferable Vote can allow for better minority representation than majority-plurality systems. The larger the number of seats is in the constituency, the more proportional the system can become. In Jordan, this system has enabled a number of popular non-party pro-monarchist candidates to be elected. The downside is that small parties whose votes are widely dispersed may not win any seats, while

larger parties can receive a substantial seat bonus.²⁰ Afghanistan, Japan, and Jordan use the Single Non-Transferable Vote system.

v. Single Transferable Vote (STV)

It means preference voting in multi-member districts due to ranking order of candidates on the ballot paper by voters. In order to win a seat, candidates must surpass a quota of first-preference votes. Voters' preferences are re-allocated to the following candidates on lists after an unsuccessful candidate is excluded or if an elected candidate has a surplus of votes. This system is perhaps the most sophisticated of all electoral systems, allowing constituents to choose between parties and between candidates within party lists. The final results retain a fair degree of proportionality related to the geographical link between voter and representative too. However this system is sometimes criticized on the grounds that preference voting is unfamiliar in many societies, and demands, at the very least, a degree of literacy and numeracy. The intricacies of an STV count are also quite complex, which is also seen as being a drawback. This has been cited as one of the reasons why Estonia decided to abandon the system after its first election. STV requires continual recalculations of surplus of votes; votes need to be counted at counting centers instead of polling places. As election integrity is a salient issue, counting in the actual polling places may be considered necessary to ensure legitimacy of the vote.²¹ Malta and Northern Ireland utilize the Single-Transferable Vote system.

b. Plurality-Majority Systems:

i. Alternative Vote (AV)

Means preference voting in single-member districts where voters rank the order of candidates using numbers. If no candidate achieves an absolute majority (i.e. 50 per cent + 1), votes are re-allocated until one of the candidates collects over 50 per cent of the casted votes. One advantage of this system is that it enables the votes of several candidates to be accumulated, so diverse but related interests can be combined to win representation. The system also enables supporters of candidates who are unlikely of being elected to influence, via their second and later preferences, the election of a major candidate. For this reason, some argue that this is the best system for promoting centrist politics. Disadvantages however are: requires a reasonable degree of literacy and numeracy to be used effectively and often can produce disproportional results because it operates in single-member districts.²² Australia and Fiji use the Alternative Vote system.

ii. Block Vote (BV)

²⁰ *Id.*

²¹ *Id.*

²² Reynolds, A., Reilly, B. and Ellis, A., "The New International IDEA Handbook of Electoral System Design," Stockholm, IDEA (2005) available at <http://www.idea.int/publications/esd/>.

This system refers to plurality voting in multi-member districts meaning voters have as many votes as many candidates to be elected. So, if four candidates are to be elected, each voter has four votes and the candidates with the highest vote totals win the seats. Advantages of the Block Vote include its retention of voter's ability to vote for individual candidates and its allowance for reasonably-sized geographical districts. However, the Block Vote can have unpredictable and undesirable impacts on election outcomes. For example, when voters cast all their votes for the candidates of a single party, the system leads to significant disproportionality. This is particularly likely when parties nominate a candidate for each vacancy and encourage voters to support every member of their slate. In Mauritius in 1982 and 1995, for example, the party in opposition won every seat in the legislature with only 64 per cent and 65 per cent of the vote, respectively. This created severe difficulties for the effective functioning of a parliamentary system based on concepts of government and opposition.²³ Lebanon and Singapore are using the Block Vote system.

iii. First Past the Post (FPTP)

This system is defined as plurality voting in a single-member district: single vote for a candidate in a single constituency. The winning candidate is the one who gains more votes than any other candidate, but not necessarily a majority of votes. The system is defended for its simplicity and its tendency to produce winners who are representatives of defined geographic areas. The major disadvantage, however, is that it excludes minorities/smaller parties from 'fair' representation in the sense that a party which wins approximately, say, 10 percent of the votes should win approximately 10 percent of the legislative seats. In the 1993 federal elections in Canada the Progressive Conservatives won 16 per cent of the votes but only 0.7 per cent of the seats, and in the 1998 general election in Lesotho the Basotho National Party won 24 per cent of the votes but only 1 per cent of the seats. This is a pattern which is repeated time and time again under this system.²⁴ Countries as Malaysia and the United Kingdom are utilizing this system.

iv. Two-Round System (TRS)

Means: plurality voting in a single-member district. If no candidate achieves an absolute majority of votes (50 per cent +1) in the first election, a second round is held (i.e. a run-off system). This system can encourage diverse interests to coalesce behind successful candidates from the first round in the lead-up to the second round of voting, thus encouraging bargains and trade-offs between parties and candidates. Additionally, as it's simpler than Alternative Vote (see section b) i.), it is more effective in countries where illiteracy may be a challenge. Major disadvantages are first of all the high cost involved in holding two elections and the possible development of instability and uncertainty between the two electoral rounds. In deeply divided societies, this uncertainty can lead to violence or

²³ *Id.*

²⁴ *Id.*

military intervention, as it did in Angola, Congo and Algeria in the 1990s.²⁵ France, Egypt, Iran and Togo are using the Two-Round system.

c. Comparison of major electoral systems²⁶

	Advantages	Disadvantages
List Proportional Representation (List PR)	<ul style="list-style-type: none"> ▪ Proportionality ▪ Inclusiveness ▪ Minority Representation ▪ Few wasted votes ▪ Easier for women to be elected ▪ No (or less) need to draw boundaries ▪ No need to hold by-elections ▪ Facilitates absentee voting ▪ Restricts growth of single-party regions ▪ Higher voter turnout likely 	<ul style="list-style-type: none"> ▪ Weak geographic representation ▪ Accountability issues ▪ Weaker legislative support for president more likely in presidential systems ▪ Coalition or minority governments more likely in parliamentary systems ▪ Much power given to political parties ▪ Can lead to inclusion of extremist parties in legislature ▪ Inability to throw a party out of power
First Past the Post (FPTP)	<ul style="list-style-type: none"> ▪ Strong geographic representation ▪ Makes accountability easier to enforce ▪ Simple to understand ▪ Encourages a coherent opposition ▪ Excludes extremist parties ▪ Allows voters to choose between candidates ▪ Strong legislative support for more likely in presidential systems ▪ Majority governments more likely in parliamentary systems 	<ul style="list-style-type: none"> ▪ Excludes minority parties ▪ Excludes minorities ▪ Excludes women ▪ Many wasted votes ▪ Often needed for by-elections ▪ Requires boundary delimitation ▪ May lead to gerrymandering ▪ Difficult to arrange absentee voting
Two-Round System (TRS)	<ul style="list-style-type: none"> ▪ Gives voters a second chance to make a choice ▪ Less vote-splitting than many other plurality-majority systems ▪ Simple to understand ▪ Strong geographic representation 	<ul style="list-style-type: none"> ▪ Requires boundary delimitation ▪ Requires costly and administratively challenging second round ▪ Often need for by-elections ▪ Long time-period between election and declaration of results ▪ Disproportionality ▪ May fragment party systems ▪ May be destabilizing for deeply divided societies
Parallel Systems	<ul style="list-style-type: none"> ▪ Inclusiveness ▪ Representation of minorities ▪ Less party fragmentation than pure List PR ▪ May be easier to agree on than other alternatives ▪ Accountability ▪ Few wasted votes 	<ul style="list-style-type: none"> ▪ Complicated system ▪ Requires boundary delimitation ▪ Often a need for by-elections ▪ Can create two classes of representatives ▪ Strategic voting ▪ More difficult to arrange absentee voting than with List PR ▪ Does not guarantee overall proportionality
Mixed Member Proportional	<ul style="list-style-type: none"> ▪ Proportionality ▪ Inclusiveness ▪ Geographic Representation 	<ul style="list-style-type: none"> ▪ Complicated system ▪ Requires boundary delimitation ▪ Often need for by-elections

²⁵ *Id.*

²⁶ *Id.*

(MMP)	<ul style="list-style-type: none"> ▪ Accountability ▪ Few wasted votes ▪ May be easier to agree on than other alternatives 	<ul style="list-style-type: none"> ▪ Can create two classes of representatives ▪ Strategic voting ▪ More difficult to arrange absentee voting than with List PR
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IV. COUNTRY CASE STUDIES

a. Representation and Participation of Women

i. Egypt

The Egyptian Constitution of 1956, asserting the equality of citizens and granting women the right to vote and run for public office, was one of the most progressive in the Arab world regarding the political rights of women. A 2005 survey on practical implementation of these rights, however, revealed that the actual representation of women has remained virtually nonexistent: women held two seats in the legislature (0.57 percent of the total number of seats) in 1957 and 11 (2.49 percent)—seven elected and four appointed by the president—in 2000.²⁷ In the local councils, female representation is equally insignificant and; in political parties is extremely limited, if not completely lacking. The highest proportion of women members in a political party is 2 percent (in the ideologically liberal Wafd Party).²⁸

Egypt has had used three different electoral systems between 1984 and 2005: (a) the List Proportional Representation system — a party-centered PR system (1984 elections), (b) a Parallel System with party lists and 48 single-member districts (1987 election), and currently using (c) the candidate-centered Two-Round system (the 1990, 1995 and 2000 elections). Each system has impacted on the country's process of political interaction, the effectiveness of the legislature, the supervisory role of the People's Assembly, and the relations between different parties and political forces.²⁹

In 1984, with party lists based on the proportional system, 54.9 per cent of the total voting-age population has registered, and only 43 per cent (or 23 percent of the voting-age population) of these actually exercised their right to vote.

In 1987, with party lists and a candidate-centered system, forty five percent of those registered voted. In 1995 and 2000 fifty per cent and 25 per cent of registered voters, respectively, voted. According to the Institute for Democracy and Electoral Assistance (IDEA), people's failure to participate in elections under the different systems can be

²⁷ International Institute for Democracy and Electoral Assistance (IDEA), *Building Democracy in Egypt: Women's political participation, political party life, and democratic elections*, 2005, p. 10 available at http://aceproject.org/regions-en/countries-and-territories/EG/case-studies/egypt_country_report_english.pdf/view (last visited June 1, 2009).

²⁸ *Id.*

²⁹ *Id.* at 13.

attributed to cultural illiteracy and lack of trust in the election results, in the government's promises, in the fairness of the election, and in the vote tabulation procedures.³⁰

In 1983, Law no. 114 created a quota system for women as candidates stipulating that a female candidate should be on each list presented for all 31 districts, which meant that women would inevitably get 31 seats. Unfortunately Law no. 188 of 1986 found this provision unconstitutional with regard to the principle of equality between men and women. As a result, in 1987 women won 14 seats, in 1990 seven seats, in 1995 five seats, and in 2000 seven seats. The reduction in the number of women candidates and actual representation in elected offices since the quota was abolished lead to increase the level of public cultural illiteracy, negatively impacting the image and role of women in society.³¹

In order to improve the representation and participation of women in the Egyptian political life, International IDEA recommends that the electoral system be reworked to combine a party list and a candidate-centered system.³² The recommendation is based on the idea that reform will not succeed unless genuine equality of opportunity between parties and independent candidates is attained, as women and other individuals (i.e. those who identify as Marxist, etc.) more often run as independents than as members of a party.

ii. Jordan

In 2003 Jordan amended its election law to establish a quota for women in the legislature. The quota is small, however, and reserves six out of 110 parliamentary seats for women.³³

iii. South Africa

South Africa implementing a proportional representation system further ensures the participation and representation of women by employing party quotas at the national or provincial levels. The Local Government Municipal Structures Act of 1998 (LGMSA) specifies that "Every party must seek to ensure that fifty percent of the candidates on the party lists are women and that women and men candidates are evenly distributed through the list."³⁴ There is no established penalty to enforce this provision. Nonetheless women's representation in local government has increased from 19% in 1995 to 29.6% in 2000 and to 40% in 2006³⁵ attributed to the ruling African National Congress's (ANC) commitment to a minimal 30% quota for women.³⁶ At national level women have enjoyed similar gains in representation. Though other political parties have not adopted the quota system, national

³⁰ *Id.*

³¹ *Id* at 14.

³² IDEA, *Building Democracy in Egypt*, *supra* at 90.

³³ ACE Knowledge Network, Jordan Country report, 15 (2005) available at http://aceproject.org/regions-en/countries-and-territories/JO/case-studies/jordan_country_report_english.pdf/view?searchterm=women.

³⁴ Election Institute of Southern Africa (EISA), Women's Representation Quotas (2009) available at <http://www.eisa.org.za/WEP/souquotas.htm>.

³⁵ *Id.*

³⁶ *Id.*

campaigns on improving women's representation and the social implications of the LGMSA have been credited with a significant increase of women candidates.³⁷ Women's representation in the National Assembly increased progressively from 27.75% in 1994, to 30% in 1999, to 32.75% in 2004, to 43% in 2009.³⁸ There remains, however, considerable variation between the provinces in the percentages of women representatives in elective bodies.

b. Representation and Participation of Other Minorities

i. Bosnia and Herzegovina

The concept of national or ethnic minority groups in Bosnia and Herzegovina has been defined in the constitution and election law as three "constituent" groups: Bosniaks, Croats, and Serbs, as well as "Others" category. Legislation specifies that each group must be represented in a specified proportion in parliament and executive. For example, the presidency consists of three individuals, one from each constituent group, who rotate every 8 months. In the legislature, the upper house (House of the Peoples) has 15 members — 5 Bosniaks, 5 Croats, and 5 Serbs — elected for a 4 year term while the lower house (National House of Representatives) has 42 members — 28 seats allocated for the Federation of Bosnia and Herzegovina and 14 seats for the Republika Srpska — elected by proportional vote.³⁹

This has been deeply criticized for institutionalizing ethnic differences rather offering collective rights to minority groups, actually securing power for local majority groups. While each group is protecting its "ethnic rights," there is no central power to unify the groups. Moreover, the other, smaller national or ethnic minorities — the Roma, the Jews and those who are of mixed heritage and do not want to claim a single ethnicity — have no real access to political power.⁴⁰

So basically the existing structure of ethnic rights and their application have been interpreted as preserving the power of the three majority ethnic groups, excluding minorities and non-nationalists from politics, undermining the project of building a united state. As a result Bosnia and Herzegovina confronts three pitfalls associated to minority rights: 1) ethnic leaders mischaracterize the aspirations and interests of the group; 2) ethnic majorities co-opt the 'special status' that is offered by minority rights, which runs against to the principle of equal treatment under the law; and 3) ethnic groups threaten to disrupt the cohesion and stability of the country.⁴¹

The institutional structure in Bosnia also contradicts international human rights norms.

³⁷ *Id.*

³⁸ *Id.*

³⁹ ACE Knowledge Network, Regions and Countries: Bosnia and Herzegovina at <http://aceproject.org/regions-en/countries-and-territories/BA/default/?searchterm=bosnia> (last visited June 1, 2009).

⁴⁰ Woodrow Wilson International Center for Scholars, Institutionalized Ethnic Division in Bosnia: a way forward for Iraq? (2007) at http://www.wilsoncenter.org/index.cfm?topic_id=1422&fuseaction=topics.item&news_id=309226.

⁴¹ *Id.*

According to Council of Europe's Venice Commission Bosnia's constitutional structure does not meet the European standard for democracy and human rights protection, since it is inherently discriminatory.⁴²

Critics hold that the institutional separation of the ethnic groups under the Dayton Agreement⁴³ in the end did not lead to integration but further political separation. An example is the presidential elections: a resident of Republika Srpska may only vote for the Serbian candidate for the presidency — regardless of her ethnicity or candidate preference. Likewise, Federation voters can only vote for candidates in the Croatian or Bosniak slots. In this way full expression of voter rights are diminished in denying voters choices merely based on geographic residence.⁴⁴

ii. South Africa

South Africa has the ethnically most representative parliament in the world⁴⁵ as a result of the country's post-apartheid policies and legislation. The bicameral parliament's lower house - the National Assembly - is elected by a system of "list proportional representation." Meaning each party running for elections submits a rank-ordered list of candidates for the ballot. The voters then cast their ballots for a party, seats being allocated according to the percentage of votes each party receives. The upper house - National Council of Provinces - consists of 90 members, 10 from each of the nine provinces. The upper house was created to give a greater voice to provincial interests and approve legislation involving shared national and provincial competencies as defined by an annex to the constitution. Each provincial delegation consists of six permanent and four rotating delegates.⁴⁶

Further adding to the protection of political rights of minorities, the South African Constitution creates an Independent Electoral Commission (IEC) and an Electoral Court. The IEC is responsible for: managing elections at all levels of government; insuring that elections are free and fair; declares the election results in a shortest time possible; determining the number of seats allocated to each constituency in national and provincial elections (nine provinces function as constituencies). The Municipal Demarcation Board is responsible for the delimitation of local authorities. The board of seven to fifteen members

⁴² *Id.*

⁴³ General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to as "the Dayton Agreement") available at http://www.ohr.int/dpa/default.asp?content_id=380 (last visited June 1, 2009).

⁴⁴ *Id.*

⁴⁵ Minority Rights Group International, Press Release March 20, 2007, available at <http://www.minorityrights.org/684/press-releases/african-states-are-the-most-dangerous-in-the-world-for-minorities-but-south-africa-comes-top-in-a-global-list-of-best-ethnic-political-representation-new-report.html>.

⁴⁶ US Department of State, Background Note: South Africa, available at <http://www.state.gov/r/pa/ei/bgn/2898.htm> (last visited June 1, 2009).

is appointed by the President and its lead by a full time chair. South Africa has 282 municipal authorities.⁴⁷

iii. Egypt

A distinctive feature of the Egyptian electoral system is the requirement that 50 per cent of the seats in the legislature be occupied by a worker or peasant. In practice, this means that each district is represented at the Assembly by two persons, one representing workers and peasants, and one representing other segments of society. It is interesting to note that this imposed quota was not declared unconstitutional (as the quota on representation of women was) due to contradictory provisions of the constitution. This quota violating the constitutional principal that all citizens are equal, regardless of race, doctrine or gender, conflicts with the principle of equality of opportunity and produces a number of perverse effects, including potential candidates misrepresenting themselves as workers or peasants, or qualified and trust worthy candidates being kept out of the legislature.⁴⁸

V. SAMPLE LEGISLATIVE LANGUAGE

a. Bosnia and Herzegovina

Election Law

Article 4.19

The certified political party or coalition shall submit a separate candidates list for each electoral unit.

For the municipal and cantonal elections the number of candidates on the candidates list of the political party, coalition or list of independent candidates may be ten percent (10%) higher than the number of mandates that are to be allocated.

For the multi-member constituencies established in Chapters 9, 10 and 11 of this law the number of candidates on the candidates list of a political party or coalition may be two (2) higher than the number of mandates that are to be allocated in that multi-member constituency.*

Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest integer.

⁴⁷ EISA, Promoting Credible Elections and Democratic Governance in Africa: South Africa Electoral System at <http://www.eisa.org.za/WEP/sou4.htm#fn2> (last visited June 1, 2009).

⁴⁸ IDEA, *Building Democracy in Egypt*, *supra* at 15.

*The candidates lists for the House of Representatives of the Federation of Bosnia and Herzegovina, the President and Vice Presidents of Republika Srpska, and the National Assembly of Republika Srpska shall indicate to which constituent people,, or the group of Others**, the candidates declare to belong.*

***Note 1:** Multi-member constituencies are defined as organized groups of municipalities as defined in the Constitution, Chapter 9, Article 9.4.⁴⁹

****Note 2:** Bosniaks, Croats, and Serbs, as constituent peoples (along with Others) are “constituent peoples.”⁵⁰

Article 9.6

Mandates are allocated in each constituency in the following manner:

For each political party and coalition, the total number of valid votes received by that political party or coalition shall be divided by 1, 3, 5, 7, 9, 11, et seq., as long as necessary for the allocation in question. The numbers resulting from this series of divisions shall be the “quotients”.

The number of votes for an independent candidate is the quotient for that candidate. The quotients shall be arranged in order from the highest quotient to the lowest quotient. Mandates shall be distributed, in order, to the highest quotient until all the constituency mandates for the body have been distributed. Political parties, coalitions, lists of independent candidates and independent candidates cannot participate in the allocation of mandates if they do not win more than 3% of the total number of valid ballots in an electoral unit.

Chapter 9.A

President and Vice- President of the Federation of Bosnia and Herzegovina

Article 9.13

In election of the President and Vice- Presidents of the Federation of BiH, at least one third of the delegates of the constituent peoples’ caucuses to the House of Peoples of the Federation shall nominate delegates for the office of the President and Vice-Presidents.

Article 9.14

The joint slates for the office of President and Vice-Presidents of the Federation of BiH shall be formed from among the candidates referred to in Article 9.13. The House of Representatives of the Parliament of the Federation of BiH shall vote on one or several joint slates composed of three candidates including one candidate from among each constituent peoples. The slate which receives the majority of votes in the House of Representatives of the Parliament of the Federation of BiH shall be elected if it gets majority of votes cast in the House of Peoples of the Parliament of the Federation of BiH including majority of votes of each constituent peoples’ caucuses.

Article 9.16

⁴⁹Bosnia and Herzegovina Constitution, Preamble, at http://www.ccbh.ba/eng/p_stream.php?kat=518 (last visited June 1, 2009).

⁵⁰ *Id.*

*The delegates to the House of Peoples of the Parliament of the Federation of BiH from the rank of Others may participate in election of candidates for the President and Vice- President. However, on this occasion, no caucus of Others shall be formed and their vote shall not be counted in calculating the specific majority in the caucuses of the constituent peoples.*⁵¹

b. South Africa

Electoral Act 73 of 1998⁵²

Chapter 4, Part 6, Electoral system (s 57A)

57A—System of representation in National Assembly and provincial legislatures

Schedule 1A applies in general to elections for the National Assembly and provincial legislatures held under this Act, but without detracting from the generality of its application, in particular to—

- (a) lists of candidates;*
- (b) the allocation of seats;*
- (c) the designation of candidates from lists as representatives in those seats; and*
- (d) the filling of vacancies.*

Schedule 1A—System of Representation in National Assembly and Provincial National Assembly

...2 The seats in the National Assembly must be filled as follows:

- (a) One half of the seats from regional lists, submitted by the respective parties, with a fixed number of seats reserved for each region, as determined by the Commission, for every election of the Assembly, taking into account available scientifically based data in respect of voters and representations by interested parties.*
- (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.*

3 *The lists of candidates submitted by a party must together not contain more names than the number of seats in the National Assembly, and each such list must denote the fixed order of preference, of the names as the party may determine.*

4 *A party's lists of candidates must consist of—*

- (a) both a national list and a list for each region; or*
- (b) a list for each region, with such number of names on each list as the party may determine, subject to item 3.*

Chapter 6, Administration (ss 60-86)

Part 1— Voting districts (ss 60-63A)

60 Establishment of voting districts

(1) *The Commission must—*

- (a) establish voting districts for the whole of the territory of the Republic;*
- (b) determine the boundaries of each voting district in accordance with the factors mentioned in section 61; and*
- (c) keep a map of each voting district.*

⁵¹ <http://www.oscebih.org/documents/25-eng.pdf>.

⁵² South African Electoral Act 73 of 1998 at http://www.elections.org.za/Documents/iec-a6_act.pdf (last visited June 1, 2009).

- (2) *The voting districts for an election are those voting districts which on the date on which the election is called are within the area in which the election is called.*

61 Factors for determining voting district boundaries

The Commission must determine the boundaries of a voting district by taking into account any factor within the proposed voting district that could affect the free, fair and orderly conduct of elections, including—

- (a) the availability of a suitable venue for a voting station;*
- (b) the number and distribution of eligible voters;*
- (c) the accessibility of a voting station to voters given—*
 - (i) the radius of the proposed voting district;*
 - (ii) the availability of transport;*
 - (iii) telecommunications facilities; and*
 - (iv) any geographical or physical feature that may impede access to the voting station;*
- (d) municipal and provincial boundaries; and*
- (e) tribal, traditional, historical and customary boundaries.*

Schedule 2—ELECTORAL CODE OF CONDUCT

1 Purpose of Code

The purpose of this Code is to promote conditions that are conducive to free and fair elections, including—

- (a) tolerance of democratic political activity; and*
- (b) free political campaigning and open public debate.*

4 Public commitment

(1) Every registered party and every candidate must—

- (a) publicly state that everyone has the right—*
 - (i) to freely express their political beliefs and opinions;*
 - (ii) to challenge and debate the political beliefs and opinions of others;*
 - (iii) to publish and distribute election and campaign materials, including notices and advertisements;*
 - (iv) to lawfully erect banners, billboards, placards and posters;*
 - (v) to canvass support for a party or candidate;*
 - (vi) to recruit members for a party;*
 - (vii) to hold public meetings; and*
 - (viii) to travel to and attend public meetings; and*
- (b) publicly condemn any action that may undermine the free and fair conduct of elections.*

(2) Every registered party and every candidate must accept the result of an election or challenge the result in a court.

5 Duty to co-operate

Every registered party and every candidate must liaise with other parties contesting an election and endeavour to ensure that they do not call a public meeting, march, demonstration, rally or any other public political event at the same time and place as that called by another party contesting the election.

6 Role of women

Every registered party and every candidate must—

- (a) respect the right of women to communicate freely with parties and candidates;*

- (b) *facilitate the full and equal participation of women in political activities;*
- (c) *ensure the free access of women to all public political meetings, marches, demonstrations, rallies and other public political events; and*
- (d) *take all reasonable steps to ensure that women are free to engage in any political activities.*

c. Egypt

Constitution⁵³

Article 196

The Shoura Council shall be composed of a number of members defined by the law, not less than 132 members.

Two-thirds of the members shall be elected by direct secret public balloting, half of whom at least must be workers and farmers.

The President of the Republic shall appoint the other third.

Article 197

The law shall determine the electoral constituencies of the Shoura Council, the number of members in every constituency, and the necessary conditions stipulated in the elected or appointed members of the Shoura Council.

⁵³ Egyptian Constitution at http://www.shoura.gov.eg/shoura_en/const_pdf/eng_const.pdf (last visited May 28, 2009).